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Apr 7, 1999

April 5, 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REM

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington, DC 20554

CC Docket 96-98

DOCKET FILE COPY ORIGINAL

RE: File No. NSD-L-99-21

Dear Ms. Salas:

The attached Comments of U S WEST, Inc., filed today, April 5, 1999, in response to the Massachusetts Department of Telecommunications and Energy's February 12, 1999 Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 978 Area Codes and its February 17, 1999 Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area codes are also reflective of U S WEST's position in opposition to the New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures.¹

Please associate the attached comments with the above-mentioned proceeding as part of the record in File No. NSD-L-99-21.

Respectfully,

Kathryn M. Krause
Kathryn Marie Krause

cc: Al McCloud and appended service list to Comments
No. of Copies rec'd 2
List A B C D E

¹ Public Notice, Common Carrier Bureau Seeks Comment On New York Department Of Public Service Petition For Additional Authority To Implement Number Conservation Measures, DA 99-462, NSD File No. L-99-21, rel. Mar. 5, 1999.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of)	
)	
Massachusetts Department of)	
Telecommunications and Energy's Petition)	
for Waiver to Implement a)	NSD File No. L-99-17
Technology-Specific Overlay in the 508,)	
617, 781, and 978 Area Codes)	
)	
)	
Massachusetts Department of)	
Telecommunications and Energy's Petition)	
for Waiver of Section 52.19 to Implement)	NSD File No. L-99-19
Various Area Code Conservation Measures)	
in the 508, 617, 781, and 978 Area Codes)	

COMMENTS OF U S WEST COMMUNICATIONS, INC.

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April 5, 1999

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COMMENTS OF U S WEST COMMUNICATIONS, INC.

I. INTRODUCTION AND SUMMARY

U S WEST Communications, Inc. ("U S WEST") opposes both the Massachusetts Department of Telecommunications and Energy's ("MA Department") Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 978 Area Codes, filed February 12, 1999 ("Overlay Petition")¹ and its Petition for Waiver of Section 52.19 to Implement Various Area Code

¹ The Overlay Petition makes clear that it is simply formally incorporating a request for relief already communicated by Massachusetts Governor A. Paul Cellucci to Chairman William Kennard. See Overlay Petition at 3, n.1. The rationale supporting the requested relief is the desire of Massachusetts to pursue number conservation processes and policies.

Conservation Methods in the 508, 617, 781, and 978 Area Codes, filed February 17, 1999 ("Conservation Petition") (both of which were recently publicly noticed).²

U S WEST opposes both Petitions. Whether viewed separately or as a combined regulatory numbering strategy, the filings represent a frontal assault on the Federal Communications Commission's ("FCC" or "Commission") Pennsylvania Numbering Order,³ which reiterated certain long-standing number administration policies and modified to a slight extent permissible state activity in this area. Furthermore, the instant Petitions articulate positions more appropriately raised in the reconsideration proceedings associated with that Order. Finally, by continuing to press for a "different result" than that articulated by the Commission in 1995,⁴ filings such as those made by the MA Department not only wreck havoc with orderly numbering administration in the telecommunications industry but they

² Public Notice, Common Carrier Bureau Seeks Comment on Massachusetts Department of Telecommunications and Energy Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 978 Area Codes, NSD File No. L-99-17, DA 99-460, rel. Mar. 4, 1999; Public Notice, Common Carrier Bureau Seeks Comment on Massachusetts Department of Telecommunications and Energy Request for Additional Authority to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes, NSD File No. L-99-19, DA 99-461, rel. Mar. 5, 1999.

³ See In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 13 FCC Rcd. 19009 (1998), pets. for recon. pending ("Pennsylvania Numbering Order").

⁴ In that year, the Commission handed down the Ameritech Order, in which the Commission first clearly articulated its position that service specific overlays were discriminatory, not competitively neutral, contrary to sound numbering administration policy, and were prohibited. See In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, 10 FCC Rcd. 4596 (1995) ("Ameritech Order").

operate to continue to insinuate contention in an area vitally in need of regulatory repose.

Not only should the Commission deny the MA Department's Petitions (as well as that filed by the New York State Department of Public Service),⁵ but it should do so in stern language, announcing that – in the future – the Commission will engage an expedited “deny” process with respect to filings that simply seek to rehash what by now should be a regulatory policy in a state of equilibrium. Parties should not be expected to relitigate these issues over and over, especially in “expedited” proceedings -- which all these state filings seem to demand.

U S WEST, the Commission, and the industry in general agree that when it comes to dealing with NPAs in jeopardy, the options are clear. In most instances, providing area code relief will necessitate 10-digit dialing. This regulatory requirement, along with its sister requirement that service specific overlays are prohibited, has been in place for well over a decade. Repeated attempts by states to bypass these dialing requirements by continuing to press for service specific overlays⁶ is annoying for those who must respond, consuming time and resources

⁵ New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures,” filed Feb. 22, 1999 (“NYSDPS Conservation Petition”), Public Notice, Common Carrier Bureau Seeks Comment On New York Department Of Public Service Petition For Additional Authority To Implement Number Conservation Measures, NSD File No. L-99-21, DA 99-462, rel. Mar. 5, 1999.

⁶ In addition to the current proposal, a raft of others have been before the Commission in the last three years. Specifically, Texas PUC's “Petition for Expedited Declaratory Ruling” and “Application for Review,” both filed May 9, 1996; “Petition of the Pennsylvania Public Utility Commission for Expedited Waiver of the 10-Digit Dialing Requirement of 47 C.F.R. Sec. 52.19 for 412 NPA Overlay Area

and failing to accommodate the sound federal numbering policies, which at this point are of some long-standing tenure. This is all the more the case when the requests for relief present an explicit challenge to the Commission's only recently re-articulated position⁷ with respect to state authority with regard to number conservation efforts⁸ and the obligations of state regulators to act quickly and responsibly with regard to area code jeopardy situations.

Conservation measures, their propriety and their regulatory controls, are currently matters being considered by the Commission. It is entirely inappropriate to seek special treatment of such serious matters through "one off" expedited parochial filings, all basically proposing that states know better than this Commission how best to address numbering administration.

Code Relief," filed Feb. 14, 1997; Connecticut Department of Public Utility Control's "Petition for Rulemaking," filed Mar. 31, 1998.

⁷ The Commission first expressed its position that number conservation matters were not relegated to the states for idiosyncratic treatment in the Second Report and Order. In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas, Administration of the North American Numbering Plan, Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd. 19392, 19533 ¶ 320 (1996) ("Second Report and Order"); vacated in part on other grounds, 124 F.3d 934 (D.C. Cir. 1997).

⁸ Not surprisingly, Massachusetts files not just a Petition for Waiver with respect to the establishment of a technology-specific overlay (i.e., the converse of a waiver from the 10-digit dialing requirement which was the relief sought by the Pennsylvania PUC in 1997 leading to the issuance of the Pennsylvania Numbering Order), but a "Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes" as well. A Waiver of Section 52.19 is precisely the relief sought by Pennsylvania that lead to the issuance of the Pennsylvania Numbering Order. See note 3 supra.

II. THE MA DEPARTMENT FAILS TO CARRY ITS BURDEN
WITH RESPECT TO EITHER WAIVER REQUEST

A. The Burden Of Sustaining A Waiver Request Is Not Met
With Respect To The MA Department Overlay Petition

U S WEST is on record in support of the Commission's Second Report and Order conclusion that 10-digit dialing with respect to the introduction of overlay area codes is the model most in the public interest.⁹ We remain of this position.

The MA Department's Waiver Requests not only fail to rebut this public interest argument¹⁰ but fail to sustain the proof burden associated with waiver requests.¹¹ The bulk of the Overlay Petition amounts to a recitation of the facts associated with area code jeopardy situations in the state, relegating to but two paragraphs a discussion of the Commission's previously announced prohibition of service specific overlays. In that discussion, the advocacy is centered entirely around the argument that the "state knows best" what is in the public interest at the local level, failing in any respect to prove that such is the case or to articulate

⁹ See, e.g., U S WEST Reply Comments, In the Matter of Area Code Relief Plan for Dallas and Houston Ordered by the Public Utility Commission of Texas, filed June 21, 1996. And see notes 16-17 below and accompanying text.

¹⁰ The MA Department bases its entire request for relief on "the fact that this is the second time in two years that Massachusetts consumers are facing the confusion and expense associated with introducing new area codes." Overlay Petition at 1. While this may represent an unusual situation, the fact itself by no means supports a finding that a service specific overlay is in the public interest, given the problems associated with such overlay. See discussion below at Section III. Nor does the fact that customer "confusion" will attend the area code relief activities warrant a departure from well-established FCC policy in this area, particularly in light of the countervailing fact that the more 10-digit dialing that occurs, the less such dialing will be confusing. See discussion below at note 19.

how the FCC's previously-articulated position proves inadequate to the Massachusetts environment.¹²

B. The Waiver Standard Is Not Met With Respect To The Number Conservation Petition

The MA Department fares no better with respect to its Conservation Petition. Again, it spends much of the text going through the "facts" of the area code relief situations. It then references the issuance of the Pennsylvania Numbering Order, observing that the FCC's rulings incorporated in that Order "have severely restricted the Department's abilities to conserve exchange codes and extend the lives of the existing area codes."¹³

In this Petition, the MA Department includes certain factual recitations. However, carriers that are not well versed or involved in Massachusetts state

¹¹ See WAIT Radio v. F.C.C., 418 F.2d 1153 (D.C. Cir. 1969), reh'g denied, 459 F.2d 1203 (D.C. Cir. 1972), cert. denied, 409 U.S. 1027 (1972); also see Northeast Cellular v. F.C.C., 897 F.2d 1164 (D.C. Cir. 1990).

¹² The most assertive the MA Department Overlay Petition is with respect to its appreciation of the local environment *vis-a-vis* prior FCC action is that "the circumstances in Massachusetts *may* be different from the circumstances in existence when the Commission originally prohibited technology-specific or service-specific area code overlays in 1995." Overlay Petition at 5 (emphasis added), pointing to the fact that the state has "88 registered competitive local exchange carriers" (*id.*) as the only fact suggesting a change in circumstance and never addressing how a service specific overlay would not favor a wireline carrier -- a fundamental proposition associated with the discriminatory "circumstances" the FCC addressed and articulated in 1995. Indeed, nowhere does the Overlay Petition address the expense or customer impact of relegating wireless carriers to a service specific overlay or explain why the adverse impacts previously identified by the Commission are absent in the Massachusetts situation.

¹³ Conservation Petition at 4. And see Massachusetts Department of Telecommunications and Energy's Petition for Reconsideration, filed Oct. 27, 1998 at 5-6, of the Pennsylvania Numbering Order.

activities have a very difficult time assessing the accuracy and context of such recitations.¹⁴ And the conservation measures which the MA Department seems interested in pursuing are in some particulars precisely those number conservation measures under current consideration by the Commission in its ongoing proceeding.¹⁵ It is fair to say that the filings in that proceeding reflect a wide range of positions on the Commission's variously proposed number conservation members. But the MA Department basically asks to be able to proceed as if no federal proceeding were open and no contentious issues were to be resolved as a matter of federal policy.

Essentially, the Petitions amount to nothing more than an expression of a fundamental disagreement with the FCC's approach to the matter of overlays and

¹⁴ This, in itself, is a compelling reason why the Commission should act emphatically to discourage these types of filings. There is something very unfair about having to engage in paper pleading filings about a subject matter that undoubtedly involves a more substantial record "off record" from the FCC proceedings. For example, it is difficult to assess a factual statement such as made by the NYSDPS that acknowledges the FCC's current ongoing proceeding on number conservation but contends that "the escalating depletion of number resources in New York requires immediate action to slow the pace of NPA exhaust." NYSDPS Conservation Petition at 2. The rate of NPA exhaust is often a contentious issue involving a range of opinions and usually state record testimony and evidence.

Furthermore, carriers such as U S WEST that participate in national dockets about matters of overall federal policy should not have to contend with "one off" establishment of policy in individual states, especially where U S WEST does not do business in those states at the time of their policy development.

¹⁵ Conservation Petition at 9-12. Public Notice, Common Carrier Bureau Seeks Comment On North American Numbering Council Report Concerning Telephone Number Pooling And Other Optimization Measures, 13 FCC Rcd. 22233 (1998). And compare NYSDPS Conservation Petition at 6-11.

10-digit dialing in area code relief situations, as only recently definitively resolved by the Second Report and Order.

III. THE FCC'S NUMBERING POLICIES ARE THE CORRECT ONES AND THE ONGOING PROCESSES TO DEVELOP NEW OR ADDITIONAL POLICIES ARE OPERATING APPROPRIATELY FROM A PROCEDURAL PERSPECTIVE

U S WEST supports the FCC's mandate for 10-digit dialing when deploying area code overlays.¹⁶ We believe that such dialing promotes competitive equity¹⁷ and that uneven dialing arrangements constitute an effective barrier to entry in the market for telephone exchange services.¹⁸

Further, we are of the position that 10-digit dialing operates to reduce customer dialing confusion, in the long run.¹⁹ To the extent that the overall national

¹⁶ This federal regulatory policy is reflected in the industry-developed and approved guidelines, as well. See Section 9.1.2 of the NPA Allocation Plan and Assignment Guidelines, INC 96-3-8-011 (April 19, 1996) (requiring that geographic NPA codes be assigned on a "non-service specific basis"); and the NPA Code Relief Planning and Notification Guidelines, INC 97-0404-016 (Jan. 27, 1999), Sections 6.3 (requiring that numbers be assigned within a new NPA "on a carrier neutral basis"), 2.6 (specifying that numbering plans should not favor any "particular interest group").

¹⁷ Ameritech Order, 10 FCC Rcd. at 4608 ¶ 27 (holding that service specific overlays are prohibited because to allow them would confer "significant competitive advantages on the wireline companies in competition with paging and cellular companies.").

¹⁸ See, e.g., 47 U.S.C. § 253(a) and (d).

¹⁹ Contrary to popular belief, customers adapt to dialing patterns fairly quickly. It is our "experience . . . that consumers quickly become accustomed to new area codes." U S WEST Response to the Reconsideration Petitions Concerning the Second Report and Order, filed Nov. 20, 1996 at 11 ("U S WEST Response"). Furthermore, we believe that over time, the cumulative national confusion for customers will be lessened and alleviated by moving to a ubiquitous 10-digit dialing model. Such dialing will become increasingly more prevalent as local number portability becomes insinuated into the competitive marketplace and begins to

model is one of 10-digit dialing with respect to overlay area code deployments, idiosyncratic state practices that differ -- while they may be convenient for residents in the locale -- will be frustrating and annoying to those traveling to and through their jurisdictions.

Finally, we have articulated our position on number conservation efforts in our recently-filed comments in the open proceeding on this issue.²⁰ As a general matter, we believe that movements toward 10-digit dialing are more sound -- as a matter of national number administration policy -- than are number pooling initiatives and some of the other proposals currently under consideration. For these reasons, also, we oppose the MA Department's Petitions as a matter of policy.

IV. THE COMMISSION'S PREEMPTORY JURISDICTION OVER NUMBERING PROVIDES IT AMPLE AUTHORITY TO DENY THE PETITIONS AND REMAIN RESOLUTE IN ITS 10-DIGIT DIALING REQUIREMENT

As the Telecommunications Act of 1996 reinforces, the Commission has exclusive jurisdiction over numbering issues.²¹ While U S WEST agrees (as it has agreed in the past) with the Commission's observation that state commissions are "uniquely positioned to understand local conditions and what effect new area codes

effect dialing patterns within rate centers that themselves have been effected by a split NPA.

²⁰ See U S WEST, Inc. Reply Comments, NSD File No. L-97-42, filed Feb. 18, 1999.

²¹ See 47 U.S.C. § 251(e) ("the Commission shall have exclusive jurisdiction over those portions of the North American Number Plan that pertain to the United States").

will have on those conditions,"²² such commissions are less well equipped to determine the overall national interest with respect to area code deployment and national dialing patterns.

It is predictable that for each state waiver granted, others will follow suit. To the extent the Commission starts granting state waiver requests to allow service specific overlays -- with the concomitant 10-digit dialing associated with such overlays (while others -- usually wireline providers -- continue to enjoy 7-digit dialing for customers calling each other) -- it is predictable that more and more states will make such filings, basing their supporting evidence on particularly parochial facts and circumstances.

Furthermore, multiple waiver requests of existing Commission rules generally demonstrate either a fundamental technical or policy problem with the mandated Commission relief. In the case of the MA Department Petitions, it seems that the latter is the driving force, rather than the former. To the extent that waivers are granted because of differences in "policy" positions, there will never be national uniformity and competitive barriers will exist across the country because of local, rather than national, policy determinations.

Competitors should not have to work the digit-dialing issue -- or the number conservation issue, for that matter -- in every United States jurisdiction, particularly those that are regional or national carriers. Neither competitors nor

²² Second Report and Order, 11 FCC Rcd. at 19512-513 ¶ 272, quoted with approval in U S WEST Response at 10.

the general consuming public is well served by such an approach, as industry consensus activity in the area of dialing recommendations confirms.²³


V. CONCLUSION

For all of the above reasons, U S WEST urges the Commission to deny both of the Petitions filed by the MA Department.²⁴

Respectfully submitted,

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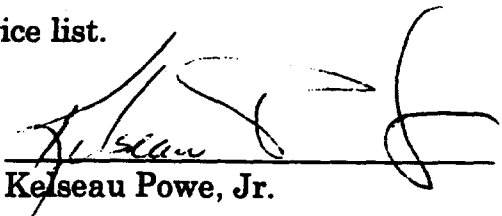
April 5, 1999

²³ "The industry recommends that a uniform dialing plan be adopted. The benefits of a uniform dialing plan include reduced customer confusion particularly in today's mobile society, and support for a consistent, fair and equitable [sic] competitive environment. . . . Specifically, it is recommended that Alternative Three (10-digit Local and Toll) be the long term goal . . . [The dialing model] should be implemented as the opportunity presents itself, (e.g., in those locations where an overlay is selected for NPA relief)." Industry Number Committee (INC) Uniform Dialing Plan, Section 6.0, at p. 15 of 18.

²⁴ The policy positions outlined above also support the denial of the Petition filed by the NYSDPS. See note 5, supra.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 5th day of April, 1999, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served, via hand delivery* or first class United States Mail,# postage pre-paid, upon the persons listed on the attached service list.



Kelseau Powe, Jr.

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